



Billing Code: 3410-30-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 220, and 226

[FNS-2019-0005]

RIN 0584-AE65

Delayed Implementation of Grains Ounce Equivalents in the Child and Adult Care Food Program

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes to delay, from October 1, 2019 until October 1, 2021, the implementation date of the “ounce equivalents” requirement for crediting grains served in the Child and Adult Care Food Program (CACFP). The final rule, *Child and Adult Care Food Program: Meal Pattern Revisions Related to the Healthy, Hunger-Free Kids Act of 2010*, published at 81 FR 24347 on April 25, 2016, specified that meal planners must use ounce equivalents to determine the amount of creditable grain served as part of a reimbursable meal or snack. The new implementation date would allow more time for FNS to develop additional technical assistance materials and for State agencies and sponsoring organizations to provide training and technical assistance to make compliance easier for meal planners nationwide.

DATES: Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] to be assured of consideration.

ADDRESSES: FNS invites interested persons to submit written comments on this proposed rule. Comments may be submitted in writing by one of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: Send comments to Community Meals Branch, Policy and Program Development Division, USDA Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302.

All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available via <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Andrea Farmer, Chief, Community Meals Branch, Policy and Program Development Division, USDA Food and Nutrition Service, 703-305-2590.

SUPPLEMENTARY INFORMATION:

Background

The final rule, *Child and Adult Care Food Program: Meal Pattern Revisions Related to the Healthy, Hunger-Free Kids Act of 2010*, published at 81 FR 24347 on April 25, 2016, specified that grains must be credited using “ounce equivalents.” Historically, meal planners at day care homes and centers in CACFP have credited grains served as part of a reimbursable meal or snack based on household measures, such as cups or “servings” of breads and other grain-based foods. The ounce equivalents provision would bring CACFP in line with the National School Lunch and School Breakfast Programs, as well as the technical measurement approach reflected in the *Dietary Guidelines for Americans*.

To make compliance easier, particularly as State agencies and local partners were focused on implementing more significant aspects of the meal pattern rule, FNS initially delayed implementation of the ounce equivalents provision until October 1, 2019. However, even with the additional time, input from stakeholders—including public comments received through a request for information, *Food Crediting in Child Nutrition Programs*, published at 82 FR 58792 on February 14, 2017—has convinced FNS that meal planners may not be universally ready to effectively implement the ounce equivalents requirement by October of this year without additional training and resources. Confusion over the implementation of ounce equivalents amongst some meal planners has generated fears about meal disallowances and meal documentation requirements, which may discourage day care homes and centers from participating in CACFP. FNS believes that additional training and technical assistance will be needed to provide meal planners with the tools they need to more easily implement this provision.

Accordingly, FNS is proposing a delay of implementation of the ounce equivalents requirement until October 1, 2021. Corresponding changes would be made to the infant meal pattern tables at 7 CFR 210.10(o), 210.10(q), 220.8(p), and 226.20(c); preschool meal pattern tables at 7 CFR 210.10(o), 210.10(p), and 220.8(o); and meal pattern tables for children and adult participants at 226.20(c). The new implementation date would allow more time for FNS to continue to develop additional technical assistance materials to better support providers. By proposing a two-year extension, State agencies and sponsoring organizations should have adequate time to use these materials to provide training and technical assistance to make compliance easier for meal planners nationwide. This proposed action is consistent with our efforts to provide excellent

customer service as we work with State and local partners to ensure high quality, nutritious meals for children and adult participants in CACFP.

Procedural Matters

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This proposed rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. The FNS Administrator has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. This rule allows meal planners additional time to receive training and technical assistance and additional time for State agencies and sponsoring organizations to facilitate implementation of the new requirement. While this rule will affect State agencies, sponsoring organizations, and day care homes and centers, any economic effect will not be significant.

Executive Order 13771

Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that the cost of planned regulations be prudently managed and controlled through a

budgeting process. This proposed rule is not expected to be an Executive Order 13771 regulatory action because it is not significant under Executive Order 12866.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. Under section 202 of UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This proposed rule contains no Federal mandates, under the regulatory provisions of title II of UMRA, for State, local, and tribal governments, or the private sector, of \$100 million or more in any one year. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 12372

CACFP is listed in the Assistance Listings under the Catalog of Federal Domestic Assistance Number 10.558 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. Since the Child Nutrition Programs are State-administered, FNS has formal and informal discussions with State and local officials, including representatives of Indian Tribal Organizations, on an ongoing basis regarding CACFP requirements and operation. This provides FNS with the opportunity to receive regular input

from State administrators and local CACFP operators, which contributes to the development of feasible requirements.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section 6(b)(2)(B) of Executive Order 13132. FNS has determined that this proposed rule does not have federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the application of the provisions of this rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with USDA Regulation 4300-4, *Civil Rights Impact Analysis*, to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this rule is not expected to limit or reduce the ability of

protected classes of individuals to participate as CACFP operators or as recipients of CACFP meal benefits. FNS also does not expect this rule to have any disparate impacts on CACFP operators by protected classes of individuals.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. FNS anticipates that this action would have no significant cost and no major increase in regulatory burden on tribal organizations.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 and 5 CFR 1320, requires OMB to approve all collections of information by a Federal agency before they can be implemented.

Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This proposed rule contains information collections that have been approved by OMB under control number 0584-0055. This rule does not add any new information collection requirements.

E-Government Act Compliance

FNS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

7 CFR Part 210

Grant programs-education, Grant programs–health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 220

Grant programs-education, Grant programs–health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs.

7 CFR Part 226

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs—health, American Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR parts 210, 220 and 226 are amended as follows:

PART 210-NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for part 210 continues to read as follows:

Authority: 42 U.S.C. 1751-1760, 1779.

2. In §210.10, revise the tables in paragraphs (o)(3)(ii), (o)(4)(ii), (p)(2), and (q)(2) to read as follows:

§210.10 Meal requirements for lunches and requirements for afterschool snacks.

* * * * *

(o) * * *

(3) * * *

(ii) * * *

Preschool Snack Meal Pattern

Food Components and Food Items ¹	Minimum Quantities	
	Ages 1-2	Ages 3-5
Fluid Milk ²	4 fluid ounces	4 fluid ounces
Meat/meat alternates (edible portion as served)		
Lean meat, poultry, or fish	½ ounce	½ ounce
Tofu, soy products, or alternate protein products ⁴	½ ounce	½ ounce
Cheese	½ ounce	½ ounce
Large egg	½	½
Cooked dry beans or peas	⅛ cup	⅛ cup
Peanut butter or soy nut butter or other nut or seed butters	1 Tbsp	1 Tbsp
Yogurt, plain or flavored unsweetened or sweetened ⁵	2 ounces or ¼ cup	2 ounces or ¼ cup
Peanuts, soy nuts, tree nuts, or seeds	½ ounce	½ ounce
Vegetables ³	½ cup	½ cup
Fruits ³	½ cup	½ cup
Grains (oz eq) ^{6,7}		
Whole grain-rich or enriched bread	½ slice	½ slice
Whole grain-rich or enriched bread product, such as biscuit, roll, or muffin	½ serving	½ serving
Whole grain-rich, enriched, or fortified cooked breakfast cereal ⁸ , cereal grain, and/or pasta	¼ cup	¼ cup
Whole grain-rich, enriched, or fortified ready-to-eat cereal (dry, cold) ^{8,9}		
Flakes or rounds	½ cup	½ cup

Puffed cereal	$\frac{3}{4}$ cup	$\frac{3}{4}$ cup
Granola	$\frac{1}{8}$ cup	$\frac{1}{8}$ cup

Endnotes:

¹ Select two of the five components for a reimbursable snack. Only one of the two components may be a beverage.

² Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent) or unflavored fat-free (skim) milk for children two through five years old.

³ Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.

⁴ Alternate protein products must meet the requirements in Appendix A to Part 226 of this chapter.

⁵ Yogurt must contain no more than 23 grams of total sugars per 6 ounces.

⁶ At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards meeting the grains requirement.

⁷ Beginning October 1, 2021, ounce equivalents are used to determine the quantity of creditable grains.

⁸ Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

⁹ Beginning October 1, 2019, the minimum serving size specified in this section for ready-to-eat breakfast cereals must be served. Until October 1, 2019, the minimum serving size for any type of ready-to-eat breakfast cereal is $\frac{1}{4}$ cup for children ages 1-2 and $\frac{1}{3}$ cup for children ages 3-5.

(4) * * *

(ii) * * *

Infant Snack Meal Pattern

Birth through 5 months	6 through 11 months
4-6 fluid ounces breastmilk ¹ or formula ²	2-4 fluid ounces breastmilk ¹ or formula ² ; and 0- $\frac{1}{2}$ slice bread ^{3,4} ; or 0-2 cracker ^{3,4} ; or 0-4 tablespoons infant cereal ^{2,3,4} or ready-to-eat breakfast cereal ^{3,4,5,6} ; and 0-2 tablespoons vegetable or fruit, or a combination of both ^{6,7}

¹ Breastmilk or formula, or portions of both, must be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered at a later time if the infant will consume more.

² Infant formula and dry infant cereal must be iron-fortified.

³ A serving of grains must be whole grain-rich, enriched meal, or enriched flour.

⁴ Beginning October 1, 2021, ounce equivalents are used to determine the quantity of creditable grains.

⁵ Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

⁶ A serving of this component is required when the infant is developmentally ready to accept it.

⁷ Fruit and vegetable juices must not be served.

* * * * *

(p) * * *

(2) * * *

Preschool Lunch Meal Pattern

Food Components and Food Items ¹	Minimum Quantities	
	Ages 1-2	Ages 3-5
Fluid Milk ²	4 fluid ounces	6 fluid ounces
Meat/meat alternates (edible portion as served):		
Lean meat, poultry, or fish	1 ounce	1 ½ ounces
Tofu, soy products, or alternate protein products ³	1 ounce	1 ½ ounces
Cheese	1 ounce	1 ½ ounces
Large egg	½	¾
Cooked dry beans or peas	¼ cup	⅜ cup
Peanut butter or soy nut butter or other nut or seed butters	2 Tbsp	3 Tbsp
Yogurt, plain or flavored unsweetened or sweetened ⁴	4 ounces or ½ cup	6 ounces or ¾ cup
The following may be used to meet no more than 50% of the requirement: Peanuts, soy nuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternates (1 ounce of nuts/seeds = 1 ounce of cooked lean meat, poultry, or fish)	½ ounce = 50%	¾ ounce = 50%
Vegetables ⁵	⅛ cup	¼ cup

Fruits ^{5,6}	1/8 cup	1/4 cup
Grains (oz eq) ^{7,8}		
Whole grain-rich or enriched bread	1/2 slice	1/2 slice
Whole grain-rich or enriched bread product, such as biscuit, roll, muffin	1/2 serving	1/2 serving
Whole grain-rich, enriched, or fortified cooked breakfast cereal ⁹ , cereal grain, and/or pasta	1/4 cup	1/4 cup

Endnotes:

¹ Must serve all five components for a reimbursable meal.

² Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent) or unflavored fat-free (skim) milk for children two through five years old.

³ Alternate protein products must meet the requirements in Appendix A to Part 226 of this chapter.

⁴ Yogurt must contain no more than 23 grams of total sugars per 6 ounces.

⁵ Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.

⁶ A vegetable may be used to meet the entire fruit requirement. When two vegetables are served at lunch or supper, two different kinds of vegetables must be served.

⁷ At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards the grains requirement.

⁸ Beginning October 1, 2021, ounce equivalents are used to determine the quantity of the creditable grain.

⁹ Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

(q) * * *

(2) * * *

Infant Lunch Meal Pattern

Birth through 5 months	6 through 11 months
4-6 fluid ounces breastmilk ¹ or formula ²	6-8 fluid ounces breastmilk ¹ or formula ² ; and 0-4 tablespoons infant cereal ^{2,3} meat, fish, poultry, whole egg, cooked dry beans, or cooked dry peas; or 0-2 ounces of cheese; or 0-4 ounces (volume) of cottage cheese; or 0-4 ounces or 1/2 cup of yogurt ⁴ ; or a

	combination of the above ⁵ ; and 0-2 tablespoons vegetable or fruit or a combination of both ^{5,6}
--	---

¹ Breastmilk or formula, or portions of both, must be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered at a later time if the infant will consume more.

² Infant formula and dry infant cereal must be iron-fortified.

³ Beginning October 1, 2021, ounce equivalents are used to determine the quantity of creditable grains.

⁴ Yogurt must contain no more than 23 grams of total sugars per 6 ounces.

⁵ A serving of this component is required when the infant is developmentally ready to accept it.

⁶ Fruit and vegetable juices must not be served.

* * * * *

PART 220 – SCHOOL BREAKFAST PROGRAM

3. The authority citation for part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

4. In §220.8, revise the tables in paragraphs (o)(2) and (p)(2), to read as follows:

§220.8 Meal requirements for breakfasts.

* * * * *

(o) * * *

(2) * * *

Preschool Breakfast Meal Pattern

Food Components and Food Items ¹	Minimum Quantities	
	Ages 1-2	Ages 3-5
Fluid Milk ²	4 fluid ounces	6 fluid ounces
Vegetables, fruits, or portions of both ³	¼ cup	½ cup
Grains (oz eq) ^{4,5,6}		

Whole grain-rich or enriched bread	½ slice	½ slice
Whole grain-rich or enriched bread product, such as biscuit, roll, muffin	½ serving	½ serving
Whole grain-rich, enriched, or fortified cooked breakfast cereal ⁷ , cereal grain, and/or pasta	¼ cup	¼ cup
Whole grain-rich, enriched, or fortified ready-to-eat breakfast cereal (dry, cold) ^{7,8}		
Flakes or rounds	½ cup	½ cup
Puffed cereal	¾ cup	¾ cup
Granola	⅛ cup	⅛ cup

Endnotes:

¹ Must serve all three components for a reimbursable meal.

² Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent) or unflavored fat-free (skim) milk for children two through five years old.

³ Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.

⁴ At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards meeting the grains requirement.

⁵ Meat and meat alternates may be used to meet the entire grains requirement a maximum of three times a week. One ounce of meat and meat alternates is equal to one ounce equivalent of grains.

⁶ Beginning October 1, 2021, ounce equivalents are used to determine the quantity of creditable grains.

⁷ Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

⁸ Beginning October 1, 2019, the minimum serving size specified in this section for ready-to-eat breakfast cereals must be served. Until October 1, 2019, the minimum serving size for any type of ready-to-eat breakfast cereal is ¼ cup for children ages 1-2 and ⅓ cup for children ages 3-5.

(p) * * *

(2) * * *

Infant Breakfast Meal Pattern

Birth through 5 months	6 through 11 months
4-6 fluid ounces breastmilk ¹ or formula ²	6-8 fluid ounces breastmilk ¹ or formula ² ; and 0-4 tablespoons infant cereal ^{2,3} meat,

	fish, poultry, whole egg, cooked dry beans, or cooked dry peas; or 0-2 ounces of cheese; or 0-4 ounces (volume) of cottage cheese; or 0-4 ounces or ½ cup of yogurt ⁴ ; or a combination of the above ⁵ ; and 0-2 tablespoons vegetable or fruit or a combination of both ^{5,6}
--	--

¹ Breastmilk or formula, or portions of both, must be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered at a later time if the infant will consume more.

² Infant formula and dry infant cereal must be iron-fortified.

³ Beginning October 1, 2021, ounce equivalents are used to determine the quantity of creditable grains.

⁴ Yogurt must contain no more than 23 grams of total sugars per 6 ounces.

⁵ A serving of this component is required when the infant is developmentally ready to accept it.

⁶ Fruit and vegetable juices must not be served.

* * * * *

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

5. The authority citation for 7 CFR part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended, 42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766.

6. In §226.20, remove the date “October 1, 2019” and add in its place “October 1, 2021” in the following places:

- a. Endnote 3 of the table in paragraph (b)(5);
- b. Endnote 7 of the table in paragraph (c)(1);
- c. Endnote 10 of the table in paragraph (c)(2); and
- d. Endnote 8 of the table in paragraph (c)(3).

Dated: June 14, 2019

Brandon Lipps

Administrator

Food and Nutrition Service

[FR Doc. 2019-13733 Filed: 6/28/2019 8:45 am; Publication Date: 7/1/2019]